

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SCOTT SMITH,

Plaintiff,

v.

SHANE JACKSON, et al.,

Defendants.

Case No. 1:17-cv-759

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendants Payton, Boisvert, Hall, and Karel filed a motion for summary judgment. The matter was referred to the Magistrate Judge, who issued an Amended Report and Recommendation (Am. R&R), recommending Defendants' motion be granted. The matter is presently before the Court on Plaintiff's objections to the Amended Report and Recommendation. Defendants did not file any response to Plaintiff's objections. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Amended Report and Recommendation to which objections have been made. For the following reasons, the Court grants the objections and rejects the Amended Report and Recommendation.

In his Amended Complaint, Plaintiff alleges that Defendants' actions in improperly rejecting and then destroying certain items of incoming mail violated his right of access to the courts as well as his right to due process (ECF No. 18). Defendants presented four grounds in support of their motion for summary judgment (ECF Nos. 29 & 30). In the Amended Report and

Recommendation, the Magistrate Judge did not address these grounds but determined that Plaintiff's claims instead failed because Plaintiff presented "absolutely no evidence that his 'legal papers' were ever mailed to him or that any prison official took any action which prevented Plaintiff from receiving these materials [or] caused him to suffer a litigation-related injury" (Am. R&R, ECF No. 38 at PageID.198-199).

In his objections, Plaintiff argues that "[t]he Magistrate incorrectly concluded that there is no genuine dispute to any material fact" and that "Plaintiff suffered no prejudice from being denied his mail" (Obj., ECF No. 39 at PageID.201-202). In support of his argument, Plaintiff relies on affidavits from Loretta Smith, confirming she mailed the papers to Plaintiff, and his own affidavit, attesting that he never received the papers (*id.*). Plaintiff opines that the "position of the Magistrate is even more incredulous when one considers the fact the MDOC's own rejection of the legal papers was because they were 'too voluminous'" (*id.* at PageID.202).

The affidavits upon which Plaintiff relies (ECF Nos. 39-1 & 40) were produced and filed after the issuance of the Amended Report and Recommendation. Hence, the Magistrate Judge did not have the benefit of this evidence when reaching a recommendation on Defendants' motion. However, the Magistrate Judge Act grants district courts the discretion to "accept, reject, or modify, in whole or in part" the findings or recommendations of a magistrate judge and to "receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1)(C). *See Muhammad v. Close*, No. 08-1944, 2009 WL 8755520, at *2 (6th Cir. Apr. 20, 2009) (Order). Having considered the circumstances at bar, the Court, in its discretion, will receive the affidavits as evidence and recommit Defendants' motion to the Magistrate Judge for further analysis.

Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 39) are GRANTED, the Amended Report and Recommendation of the Magistrate Judge (ECF Nos. 37-38) is REJECTED.

Dated: February 19, 2020

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge